

REMARKS

Applicant respectfully requests reconsideration. Claims 5-12, 18-27, 47, 48 and 53-57 were previously pending in this application. By this amendment, Applicant is canceling claims 26, 48, and 53-57 without prejudice or disclaimer. Claim 27 has been amended to place it independent for by incorporating the limitations of cancelled claim 26, from which it previously depended. As a result, claims 5-12, 18-25, 27, and 47 are pending for examination with claims 5, 18, 27, and 47 being independent claims. No new matter has been added.

Rejections Under 35 U.S.C. §103

1. Rejection of claims 26, 48, and 53-57 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,669,818 to Stark in view of U.S. Patent No. 3,916,823 to Halloran

The Patent Office rejected claims 26, 48, and 53-57 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,669,818 to Stark in view of U.S. Patent No. U.S. Patent No. 3,916,823 to Halloran.

Without conceding the merits of the basis for rejection set forth in the Final Office Action, Applicant has, solely for the purpose of expediting issuance of a patent, cancelled each of the claims rejected on the present basis.

Accordingly, the present rejection has been rendered moot, and withdrawal of this rejection is respectfully requested.

2. Rejection of claims 5-12, 18-27, 47, 48, and 53-57 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,770,240 to Laird et al. in view of U.S. Patent No. 3,669,818 to Stark

The Patent Office rejected claims 5-12, 18-27, 47, 48, and 53-57 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,770,240 to Laird et al. in view of U.S. Patent No. 3,669,818 to Stark. In the Final Office Action, the Patent Office withdrew the indication of allowable subject matter of claims 5, 18, and 47. The Final Office Action notes that earlier in prosecution, a rejection had been raised in view of International Patent Publication No. WO

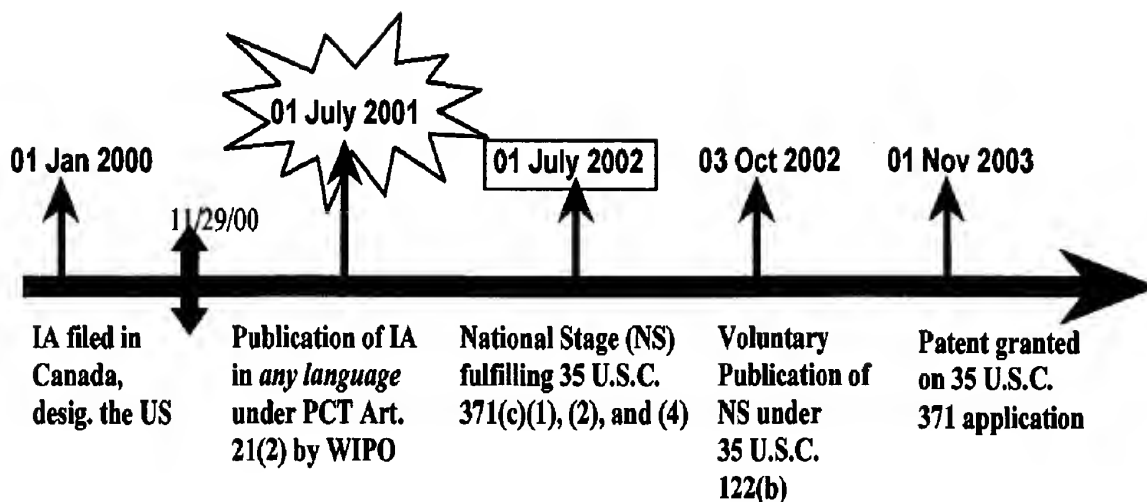
00/71802 to Laird et al. (Office Action of June 5, 2003). The Patent Office points out that the Applicant successfully traversed that rejection on the basis that the Laird et al. International Patent Publication was not prior art under 35 U.S.C. §102(e). The Patent Office now alleges that U.S. Patent No. 6,770,240 to Laird et al., which is the U.S. National Phase entry under 35 U.S.C. §371 of the International Application published as International Patent Publication No. WO 00/71802 has a valid 102(e) date as of May 21, 1999, the filing date of U.S. Provisional Application Serial No. 60/135,379 to which the International Application claims the benefit of priority under 35 U.S.C. §119(e). Thus, the present rejection is predicated on U.S. Patent No. 6,770,240 to Laird et al. being a 102(e) qualified reference against the present application.

While the Applicant does not concede the merits of the rationale set forth in the Final Office Action in support of the present rejection, Applicant points out that the present rejection is improper and cannot be maintained because the Laird et al. patent is not prior art under 35 U.S.C. §102(e) to the present application.

As with the Laird et al. International Publication, which the Patent Office agrees is not prior art under §102(e), the Laird et al. patent, which is a National Phase entry of the International Application published as the Laird International Patent Publication is not prior art under §102(e) either. Applicant notes that the international filing date of the Laird et al. International Application is May 22, 2000. As pointed out in the MPEP §706.02(f)(1)-“Examination Guidelines for Applying References Under 35 U.S.C. 102 (e)” – U.S. Patents resulting from national phase entry of international applications filed prior to November 29, 2000 have a 35 U.S.C. §102(e) prior art date that is the date of completion of the requirements of 35 U.S.C. §371(c)(1), (2) and (4) (see Example 6 (page 700-33), and Flow Chart II (page 700-38) provided in the above-identified section of the MPEP and reproduced below for convenience (emphasis added)):

Example 6 : References based on the national stage (35 U.S.C. 371) of an International Application filed prior to November 29, 2000 (language of the publication under PCT Article 21(2) is not relevant).

The reference U.S. patent issued from an international application (IA) that was filed prior to November 29, 2000 has a 35 U.S.C. 102 (e) prior art date of the date of fulfillment of the requirements of 35 U.S.C. 371 (c)(1), (2) and (4). This is the pre-AIPA 35 U.S.C. 102 (e). The application publications, both the WIPO publication and the U.S. publication, published from an international application that was filed prior to November 29, 2000, do not have any 35 U.S.C. 102 (e) prior art date. According to the effective date provisions as amended by Pub. L. 107-273, the amendments to 35 U.S.C. 102 (e) and 374 are not applicable to international applications having international filing dates prior to November 29, 2000. The application publications can be applied under 35 U.S.C. 102 (a) or (b) as of their publication dates.



The 35 U.S.C. 102(e)(1) date for the IA Publication by WIPO is: None. The 35 U.S.C. 102(e)(1) date for the Publication by USPTO is: None. **The 35 U.S.C. 102(e)* date for the Patent is: 01 July 2002.**

The IA publication by WIPO can be applied under 35 U.S.C. 102 (a) or (b) as of its publication date (01 July 2001).

Additional Priority/Benefit Claims :

If the IA properly claimed priority/benefit to any earlier-filed U.S. application (whether provisional or nonprovisional), there would still be no 35 U.S.C. 102 (e)(1) date for the U.S. and WIPO application publications, and the 35 U.S.C. 102 (e) date for the patent will still be 01 July 2002 (the date of fulfillment of the requirements under 35 U.S.C. 371 (c)(1), (2) and (4)).

If a later-filed U.S. nonprovisional (35 U.S.C. 111 (a)) application claimed the benefit of the IA in the example above, the 35 U.S.C. 102 (e)(1) date of the application publication of the later-filed U.S. application would be the actual filing date of the later-filed U.S. application, and the 35 U.S.C. 102 (e) date of the patent of the later-filed U.S. application would be 01 July 2002 (the date that the earlier-filed IA fulfilled the requirements of 35 U.S.C. 371 (c)(1), (2) and (4)).

If the patent was based on a later-filed U.S. application that claimed the benefit of the international application and the later filed U.S. application's filing date is before the date the requirements of 35 U.S.C. 371 (c)(1),(2) and (4) were fulfilled (if fulfilled at all), the 35 U.S.C. 102 (e) date of the patent would be the filing date of the later-filed U.S. application that claimed the benefit of the international application.

Thus the date of applicability of the Laird et al. patent as prior art under 35 U.S.C. §102(e) is the date of completion of the requirements of 35 U.S.C. §371(c)(1), (2) and (4) – namely, March 8, 2002. This date is after Applicant's non-provisional filing date of September 21, 2000 for the present application. Accordingly, the Laird et al. patent is not prior art under 35 U.S.C. §102(e). For this reason, it is believed that the present rejection cannot be maintained and reconsideration and withdrawal of the rejection on the present basis is respectfully requested.

Moreover, even if the Laird et al. patent were prior art under §102(e), which it is not as shown above, Applicant notes that the present basis for rejection cannot be maintained because

the Laird et al. patent would still not be prior art against Applicant's application for the purposes of establishing a rejection under 35 U.S.C. § 103(a) because, as indicated below, the presently claimed invention and U.S. Patent No. 6,770,240 to Laird et al. were, at the time the presently claimed invention was made commonly-owned or subject to an obligation of assignment to the same party (see 35 U.S.C. § 103(c): "Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.")

STATEMENT OF COMMON OWNERSHIP

**THE PRESENTLY CLAIMED INVENTION AND U.S. PATENT NO. 6,770,240
TO LAIRD ET AL. WERE, AT THE TIME THE PRESENTLY CLAIMED
INVENTION WAS MADE, OWNED BY OR SUBJECT TO AN OBLIGATION OF
ASSIGNMENT TO MICROFIBRES, INC.**

Accordingly, even if the Laird et al. patent were qualified as being applicable to the present application under 35 U.S.C. § 102(e), the Laird et al patent as presently applied would nonetheless be disqualified as prior art against the present application pursuant to 35 U.S. C. § 103(c). For this additional reason the Laird et al. patent cannot support the present rejection, and reconsideration and withdrawal of the rejection is respectfully requested.

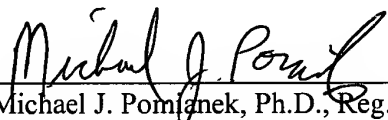
CONCLUSION

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

By:


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